

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**MYRON JACKSON,**

**Petitioner,**

**vs.**

**CRIMINAL NO. 96-CR-80205-01  
CIVIL ACTION NO. 03-CV-70189-DT**

**DISTRICT JUDGE PAUL BORMAN**

**MAGISTRATE JUDGE DONALD A.  
SCHEER**

**UNITED STATES OF  
AMERICA,**

**Respondent.**

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**ORDER DENYING A CERTIFICATE OF APPEALABILITY**

Petitioner filed a notice of appeal pursuant to 28 U.S.C. § 2255. In order to appeal the court's decision under § 2255, a certificate of appealability ("COA") must issue. *See* 28 U.S.C. § 2253(c)(1). "A certificate of appealability may issue under [§ 2253(c)(1)] only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where a district court dismisses a petition on procedural grounds:

a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right **and** that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

*Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added).

Upon review of the record, reasonable jurists could not debate whether Petitioner suffered the denial of a constitutional right, nor would jurists of reason debate whether this Court

was correct in its procedural ruling. The Supreme Court's opinion in *United States v. Booker*, 125 S. Ct. 738 (2005) makes clear that its holding was to apply only to pending cases on direct review. *See Booker*, 125 S. Ct. at 769. As the Magistrate Judge stated in his Report and Recommendation, issued on May 31, 2005, "[s]ince Petitioner's conviction became final on August 30, 2001, well before the *Booker* decision was announced, the motions attacking the validity of Petitioner's sentence were not timely."

Accordingly, the Court declines to issue a certificate of appealability in this matter.

**SO ORDERED.**

s/Paul D. Borman  
**PAUL D. BORMAN**  
**UNITED STATES DISTRICT JUDGE**

**Dated: September 27, 2005**

**CERTIFICATE OF SERVICE**

**Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on September 27, 2005.**

s/Jonie Parker  
**Case Manager**